IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE THEACTING CHIEF JUSTICE
BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No. 443 of 2007

Dated:31st December 2007.

Between:

M/s. Vamshi Art Printers (P) Ltd., 6-1-628/4/6, Khairatabad, Hyderabad, represented by its Managing Director, Sri G.Venugopala Krishna.

..... PETITIONER

AND

Commercial Tax Officer, Basheerbagh Circle, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE THEACTING CHIEF JUSTICE
BILAL NAZKI
AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No. 443 of 2007

JUDGMENT : (per NRR,J)

The writ petitioner company is an assessee on the rolls of the 1st respondent. The 1st respondent on 21.11.2002 completed the final assessment proceedings for the assessment year 2001-2002 under Andhra Pradesh General Sales Tax Act, henceforth referred to as `Act'. In exercise of the power available under Section 20 of the Act, the 2nd respondent had revised these assessment proceedings on 13.11.2006 and brought to tax the entire exempted turnover of Rs.58,85,843/- to tax at 4%. The said turnover is related to the supplies made by the petitioner to United Nations International Childrens Emergency Fund Organisation (henceforth referred to as UNICEF) and the charges received from the A.P.Text Book Press belonging to the State Government, for Printing the Text Books on the paper supplied by the State Government. When the 2nd respondent put the petitioner on show-cause notice through her proceedings dated 26.10.2006 proposing to revise the assessment order, the assessee had raised objection for the same on two counts. One is that, the turnover on the material supplied to UNICEF is not liable to be subjected to taxation and that the service charges received from the State Government for undertaking printing of books on the paper supplied by it are exempted from taxation and

hence the proposed revision has been objected to. The 2nd respondent had concluded the revision proceedings in the following manner :

> "The above reply of the assessee is examined. As already stated in the notice the assessee had opted to pay tax under Section 5-G of the APGST Act, 1957 which is a special scheme of tax payable on composition at a reduced rate of 4%. As this scheme is optional and as the assessee himself came forward to pay tax under this scheme, the Department is not bound by the compulsions such as generally exempted goods shall not be taxed. Section 5-G does not provide for any exemption on the deemed sale of generally exempted goods. Therefore the claim of the assessee that they executed printing work of generally exempted "Reading books" and "Unicef literature" and hence they are not liable to tax is not tenable."

It is this order which has been challenged in this writ petition.

Heard Sri S.Krishna Murthy, learned counsel for the petitioner and Sri Krishna Koundinya, learned Special Government Pleader for Commercial Taxes.

Learned counsel for the petitioner would urge that that the Parliament enacted the United Nations (Privileges and Immunities) Act, 1947 (Act 46 of 1947) to

give affect to the convention on the privileges and immunities of the United Nations. Section 3 of the above Act 46 enables certain privileges and immunities to be conferred on international organizations and their representatives and officers and in particular Article II of the Schedule to the said Act, Section 8 requires the Member States of the United Nations to make appropriate administrative arrangements for the remission or return of the amount of duty or tax. According to the learned counsel for the petitioner, the State Government passed orders granting exemption from sales tax in this respect. Similarly, for the charges paid by the State Government for getting the text books printed on the paper supplied by it to the petitioner is also exempted from taxation.

Per contra, learned Special Government Pleader for Commercial Taxes Department would urge that Section 5-G of the Act is a special provision which enables an assessee to opt for payment of tax at a uniform rate of 4% on the total turnover whereas in terms of Section 5-F though certain components that go into the works contract are exempted, the rest are liable to be subjected to taxation at 8% and since the writ petitioner-assessee had opted for payment of taxation at the uniform slab rate of 4% in terms of Section 5-G of the Act, he cannot now seek any exemptions further. Therefore, the order of revision passed by the 2nd respondent is perfectly legitimate and correct. The learned Government Pleader would also urge that in terms of Section 21 of the act, A.P. Sales Tax Appellate Tribunal is the final fact

finding authority whom the petitioner – assessee could have moved by way of an Appeal against the orders of the 2nd respondent revising the final assessment and without exhausting such an efficacious alternative statutory remedy of Appeal, the petitioner assessee cannot straightaway invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

It is a well recognized principle that any State, may by way of agreements, conventions or treaties incur certain obligations which in International Law are binding on such a State. International Treaty obligations are needed to be given effect to even without there being any legislative measures taken, so long as such obligations are not effecting the justiciable rights of it's citizens or others. The Indian Constitution has recognized these concepts and accordingly incorporated the necessary provisions under Article 51 and Article 253 of our Constitution. Exclusive power has been reserved for the Parliament to make laws with regard to International Treaty obligations etc., in terms of the Entry 10, 12 and 13 of List I of the VII Schedule to the Constitution. It is therefore manifestly clear that the laws made by the Parliament for giving effect to the privileges and immunities towards the United Nations Organisation and its various institutions is based upon a high principle that India being a Member Nation of the United Nations Organisation, it should strive to promote international peace and provide the necessary legal environment for enforcing the international treaty and covenant

obligations amongst the comity of Nations. India has to necessarily present itself before intermational for a as a nation, where the right environment for securing the benefits of development to percolate down exist. As a part of these policy preferences and principles, exclusive power has been conferred upon the Parliament to make laws and they bind all other organs of the State. The Municipal laws made by any Member State of the Union of India have to necessarily be read in the context of the law made by the Parliament with particular reference to Article 253 of the Constitution. If there is any law or notification issued by the Government of India, granting immunity or imposing a blanket ban in favour of UNICEF, a UN institution from Municipal Taxation, then the Act made by the State Legislature must be construed in terms thereof. In other words, the APGST Act should not be understood in such a manner as to render the exemption from taxation, granted in favour of United Nations Organisation and various other institutions of it, nugatory or illusory. In the instant case, the APGST Act must be understood to have been made only for subjecting to tax such cases of sales or purchases which are otherwise capable of such local or municipal taxation. If sales or purchases made by United Nations Organisation or its sister institutions are not liable to suffer any taxation at all as a part of international treaty or convention obligations, such sales or purchases are incapable of being subjected to taxation.

The distinction between Section 5-F and 5-G of

the Act, with regard to levy of Tax on transfer of property in goods involved in execution of works contract, is only with regard to the mode and method of collection of sales tax. The distinction in between the two being, whether it should be collected at a fixed slab rate on the entire turnover or the same should be subjected to taxation at a higher rate, on certain components of the works contracts. But the philosophy and the common theme enshrined behind both the provisions is that the sales or purchases which are otherwise liable to suffer taxation are alone subjected to such taxation and to the extent of sales or purchases which are not liable to suffer taxation cannot be brought into the dragnet of Section 5-F or 5-G of the APGST Act.

However, the above stated principles will get attracted only upon a factual finding that the Central Government, in exercise of power available to it under Section 3 of Act 46 of 1947 had notified UNICEF also as entitled for tax immunity. It is a contestable fact. Further, whether tax immunity has been granted or it is only remission or return of tax paid has been accorded has got to be ascertained. Therefore, the more appropriate course would have been to avail the Appellate remedy available against the impugned order under Section 21 of the Act.

It is only a self imposed restraint by the Courts not to entertain writ petitions when there is an effective alternative remedy. Availability of an effective alternative remedy is therefore not liable to be construed as an

absolute bar of exercise of jurisdiction under Article 226. When any contestable question of fact is liable to be ascertained, in such cases as a rule of prudence, courts have been declining to entertain the writ petitions without the alternative statutory remedies being exhausted. The findings of fact can be recorded by the alternative fora after a proper and thorough adjudication so that the High Court will be saved of the bother to determine them at the first instance. In cases like the present one, where the facts are contestable and they need to be ascertained first, after an opportunity is accorded to both sides, it is inappropriate to examine these very questions in this writ petition. Hence, the objection raised by the learned Special Government Pleader is worthy of restraining us from examining the question that has fallen for consideration in this writ petition.

We, therefore, permit the petitioner to avail the remedy available under Section 21 of the Act, provided he approaches the Sales Tax Appellate Tribunal within 30 days from today. The original of the impugned order passed by the 2nd respondent be returned to the petitioner while retaining a copy thereof on record of this case.

The writ petition stands disposed of accordingly. No costs.

--ACTING CHIEF JUSTICE BILAL NAZKI

knk

Dt :31st December 2007.

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JUSTICE NOOTY RAMAMOHANA RAO